



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 445

## IN THE MATTER OF JOHN SHAY

### DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and John Shay (Mr. Shay) pursuant to §5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final Commission order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On July 11, 1991, the Commission initiated a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, involving Mr. Shay, an Everett School Committee member. The Commission concluded that inquiry and, on March 12, 1992, found reasonable cause to believe that Mr. Shay violated G.L. c. 268A.

The Commission and Mr. Shay now agree to the following findings of fact and conclusions of law:

1. At all times relevant to this matter, Mr. Shay was an Everett School Committee (School Committee) member, and as such, a municipal employee as defined in G.L. c. 268A, §1(g). As a School Committee member, Mr. Shay's responsibilities include determining Everett School Department (School Department) policy, discussing and voting on budgetary matters, and annually voting on various personnel matters.

2. At all times relevant to this matter, Fred Foresteire (Foresteire) was Superintendent of the Everett Schools. Foresteire was directly accountable to the School Committee. The superintendent's duties include directing and supervising the entire school system (teachers, maintenance, and support staff) and working on the school department budget. Additionally, the superintendent, as the secretary of the School Committee, makes recommendations but has no vote on the School Committee.

3. In April, 1990, Mr. Shay was in the process of moving into a new apartment. On April 4, 1990, Mr. Shay telephoned Foresteire to discuss School Committee matters. During that conversation, Mr. Shay told Foresteire that he was having trouble with the workers he had hired to paint his new apartment and that he feared the apartment would not be ready for the upcoming weekend move.

4. The next day, Foresteire approached a School Department painter (painter) who was working in the school administration building and asked him to take a look at Mr. Shay's apartment and provide advice as to what could be done to finish painting the apartment on time.

5. Later that day, Foresteire and the painter travelled to and examined Mr. Shay's apartment. The painter told Foresteire that a significant amount of work was needed to finish the job prior to the weekend move. The painter agreed to assist in the apartment painting and requested a personal day,<sup>1/</sup> which Foresteire granted.<sup>2/</sup>

6. Over the next three days, the painter worked over 22.5 hours and expended approximately \$250 in labor and supplies.<sup>3/</sup> Prior to painting the apartment, the painter had never personally met Mr. Shay, although he knew he was a School Committee member.

7. Mr. Shay encountered the painter working in his apartment on two or three occasions. Mr. Shay was aware that the painter was a School Department employee. Mr. Shay never offered to and ultimately never did compensate the painter.

8. G.L. c. 268A, §3, in pertinent part, prohibits a municipal employee from accepting anything of substantial value for or because of any official act or acts within his official responsibility performed or to be performed by him.<sup>4/</sup>

9. By receiving a gratuitous paint job of substantial value from a School Department painter, while as a School Committee member he was in a position to take official action concerning School Department employees which could affect the painter's interest,<sup>5/</sup> Mr. Shay received a gift of substantial value for himself for or because of acts within his official responsibility performed or to be performed by him. In doing so, Mr. Shay violated G.L. c. 268A, §3(b).<sup>6/</sup>

Based on the foregoing facts, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Mr. Shay:

1. that he pay to the Commission the amount of five hundred dollars (\$500.00) as a civil fine for violating G.L. c. 268A, §3(b);
2. that he pay to the Commission the sum of two hundred and fifty dollars (\$250) as a forfeiture of the unlawful benefit he received in accepting the gratuitous paint job;<sup>7/</sup>
3. that he will act in conformance with the requirements of G.L. c. 268A in his future conduct as a municipal employee; and
4. that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any related administrative or judicial proceedings to which the Commission is or may be a party.

**Date: July 7, 1992**

<sup>1/</sup>A School Department employee is allocated two personal days a year.

<sup>2/</sup>Superintendent Foresteire's solicitation of a subordinate painter's services also raises conflict of interest issues for Foresteire. *In re Foresteire*, 1992 SEC 588.

<sup>3/</sup>The painter worked in Mr. Shay's apartment on Thursday, April 5, from 4:00 p.m. to 10:30 p.m.; on Friday, April 6, from 7:30 a.m. until 3:30 p.m. (personal day); and on Saturday, April 7, from 8:00 a.m. to 4:00 p.m. for a total of approximately 22.5 hours. The estimated value of the labor is \$225 and the painter's own supplies is \$24.

<sup>4/</sup>Anything with a value of \$50 or more is an item of substantial value for the purpose of §3. *See Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584 (1976).

<sup>5/</sup>The School Department was facing several lay-offs at the time the painter performed the services in Mr. Shay's apartment, however, there is no evidence that Mr. Shay took any action on the painter's behalf.

<sup>6/</sup>As the Commission stated in *In re Michael*, 1981 SEC 59, 68:

A public employee need not be impelled to wrongdoing as a result of receiving a gift or a gratuity of substantial value in order for a violation of Section 3 to occur. Rather, the gift may be an attempt to foster goodwill. All that is required to bring Section 3 into play is a nexus between the motivation for the gift and the employee's public duties. If this connection exists, the gift is prohibited. To allow otherwise would subject public employees to a host of temptations which would undermine the impartial performance of their duties, and permit multiple remuneration for doing what employees are already obliged to do — a good job.

<sup>7/</sup>The Commission made clear in *Advisory No. 8* that in appropriate cases it would seek to recover any economic advantage any person obtained in violating §3.